

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TICOR TITLE COMPANY, a Washington  
corporation; and COMMONWEALTH  
LAND TITLE INSURANCE COMPANY, a  
Florida corporation,

Plaintiffs,

v.

KIAVI FUNDING, INC., a Delaware  
corporation, f/k/a LendingHome Funding  
Corporation,

Defendant.

NO. 2:22-cv-832

COMPLAINT FOR DECLARATORY  
RELIEF

**I. NATURE OF CASE**

1. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 brought by Commonwealth Land Title Insurance Company (“Commonwealth”) and Ticor Title Company (“Ticor”) against Kiavi Funding, Inc. (“Kiavi”) to resolve disputes over whether coverage exists under two policies of title insurance and two Closing Protection Letters.

2. Defendant Kiavi has made claims under two title policies and two Closing Protection Letters arising out of two separate real estate transactions. In both

1 transactions, Kiavi transferred money to Aurora Lynn Rivera, the sole governor of the  
 2 company Escrow Services of Washington LLC ("Escrow Services"), a company wholly  
 3 unrelated to either Commonwealth or Ticor. Ms. Rivera, acting as an escrow agent, then  
 4 absconded with the funds transferred to her and her company. As a result, certain  
 5 interests were not paid off as directed by Kiavi, and no premium was ever paid for two  
 6 Commonwealth title insurance policies. Kiavi has made certain claims under the title  
 7 policies and closing protection letters, which Commonwealth has denied.  
 8 Commonwealth and Ticor bring this action seeking a declaration that their denial of  
 9 coverage is proper under the terms of the title policies, closing protection letters and law.

## 10 II. PARTIES

11 3. Plaintiff Ticor Title Company is a corporation organized, existing and  
 12 doing business under and by virtue of the laws of the State of Washington with its  
 13 principal place of business located in Seattle, Washington. Ticor is a member of the  
 14 Fidelity National Financial, Inc. family of companies.

15 4. Plaintiff Commonwealth Land Title Insurance Company is a corporation  
 16 organized, existing and doing business under and by virtue of the laws of the State of  
 17 Florida with its principal place of business located in Jacksonville, Florida.  
 18 Commonwealth is a member of the Fidelity National Financial, Inc. family of companies.

19 5. Defendant Kiavi Funding, Inc. ("Kiavi") is a Delaware corporation with a  
 20 principal place of business in Pittsburgh, Pennsylvania. Kiavi was formerly known as  
 21 LendingHome Funding Corporation.

## 22 III. JURISDICTION AND VENUE

23 6. *Jurisdiction.* Defendant Kiavi is a citizen of a different state than either of  
 24 Plaintiffs. The amount in controversy exceeds \$75,000. This court has diversity  
 25 jurisdiction pursuant to 28 U.S.C. § 1332.



1           9.     Aurora Lynn Rivera was licensed as a Limited Practice Officer by the  
2 Washington State Bar Association. Rivera is the sole governor of Escrow Services.  
3 Plaintiffs have no agency agreement with Rivera or Escrow Services. Rivera and Escrow  
4 Services served as agent for Kiavi in completing Kiavi's instructions regarding the Seattle  
5 and Everett Properties.

6           10.    The Kiavi deed of trust on the Seattle Property was recorded on October 8,  
7 2021. Rivera induced Ticor to issue a title insurance policy to Kiavi by representing that  
8 she/Escrow Services would pay the prior deed of trust held by Level at closing. In  
9 reliance on that representation, Ticor issued a title policy. A copy of that purported  
10 policy is attached as *Appendix A*.

11           11.    The Kiavi deed of trust on the Everett Property was recorded on October  
12 22, 2021. Rivera induced Ticor to issue a title insurance policy to Kiavi by representing  
13 that she/Escrow Services would pay the prior Kiavi/Lending Home deed of trust at  
14 closing. In reliance on that representation, Ticor issued a title policy. A copy of that  
15 purported policy is attached as *Appendix B*.

16           12.    Rivera/Escrow Services failed to follow Kiavi's escrow instructions.  
17 Instead of using the funds Kiavi wired into escrow to pay off the prior deeds of trust on  
18 the Properties and to pay Ticor for issuance of title policies, on information and belief,  
19 Rivera diverted the escrowed funds to an account in Turkey. Rivera later claimed that  
20 she had been the victim of an extortion.

21           13.    Defendant Commonwealth provided a Closing Protection Letter to Kiavi  
22 dated September 1, 2021 in connection with the Seattle Property, and one dated  
23 September 10, 2021 in connection with the Everett Property. True copies are attached as  
24 *Appendices C and D*. Under those Letters, Commonwealth agreed to indemnify Kiavi  
25 for certain losses in connection with the transactions *only if* the "Settlement Agent or  
26

1 Approved Attorney” handling the escrow transaction was “Ticor Title Company.” Ticor  
 2 Title Company did not handle the escrow transaction for either property. No sub-escrow  
 3 was ever established with Ticor, and no payment was ever received by Ticor or  
 4 Commonwealth in exchange for these Closing Protection Letters. Neither Rivera nor  
 5 Escrow Services is a “Settlement Agent or Approved Attorney” under the Closing  
 6 Protection Letters.

7 14. On March 14, 2022, Kiavi made a claim on the Everett Policy because of  
 8 “an alleged issue with the payoff of a prior lien on our preliminary title ... it is our  
 9 understanding that due to possible fraud, that the [prior LendingHome lien] was not  
 10 paid off, resulting in Kiavi’s current loan not being in first lien position.” A true copy of  
 11 this letter is attached as *Appendix E*.

12 15. On March 16, 2022, Kiavi made a claim on the Seattle Policy because of “an  
 13 alleged issue with the payoff of a prior lien ... It is our understanding that due to possible  
 14 fraud, that [lien of Level Capital] was not paid off, resulting in Kiavi’s current loan not  
 15 being in first lien position.” A true copy of this letter is attached as *Appendix F*.

16 16. On April 22, 2022, owner TREIC filed an Amended Complaint in *Tang Real*  
 17 *Estate Investments Corp. v. Escrow Services of Washington, et al.*, King County Superior  
 18 Court No. 21-2-15612-2 SEA (“TREIC Lawsuit”), naming Kiavi as a defendant. A true  
 19 copy of the Amended Complaint is attached as *Appendix G*. Kiavi forwarded a copy of  
 20 the Amended Complaint to Commonwealth on April 28, 2022 and requested indemnity  
 21 and defense coverage determinations.

22 17. By letters dated June 8, 2022, true copies of which are attached at  
 23 *Appendices H* and *I*, Commonwealth denied Kiavi’s claim for indemnity and defense  
 24 for, *inter alia*, the following reasons:

1 (a) Commonwealth never received payment for the policies, and there  
2 is a failure of consideration. There is no policy coverage on either Property and there is  
3 no duty to defend.

4 (b) Even if any coverage under a title insurance policy existed, the  
5 tendered Amended Complaint in the TREIC Lawsuit does not state a claim which  
6 potentially triggers coverage under the terms of either Policy.

7 (c) There is no claim under either Closing Protection Letter because  
8 those letters were limited to acts and omissions of Commonwealth's agent Ticor, and did  
9 not provide coverage for the acts and omissions of Rivera/Escrow Services.

#### 10 **V. FIRST CLAIM: DECLARATORY RELIEF**

11 18. All allegations in the preceding paragraphs are incorporated herein.

12 19. A real, present, and justiciable controversy has arisen between Kiavi and  
13 Plaintiffs regarding whether Commonwealth and/or Ticor has any duty under the Title  
14 Policies or the Closing Protection Letters either to indemnify Kiavi or defend it in the  
15 TREIC Lawsuit.

16 20. This Court should determine and declare that (a) no valid policy of title  
17 insurance was issued to Kiavi by Commonwealth or Ticor; (b) Kiavi has no claim under  
18 the Closing Protection Letters; (c) Commonwealth has no duty to defend Kiavi in the  
19 TREIC Lawsuit; (d) Kiavi suffered no injury that is subject to indemnification under the  
20 Title Policies or Closing Protection Letters; and (e) Commonwealth has no indemnity or  
21 other obligations under the title policies.

#### 22 **VI. PRAYER FOR RELIEF**

23 21. Plaintiffs request that this Court:

24 (a) Declare that Commonwealth and Ticor have no duty to indemnify  
25 Plaintiff Kiavi under the Title Policies or Closing Protection Letters;

1 (b) Declare that Commonwealth and Ticor properly rejected Kiavi's  
2 tender of claims;

3 (c) Declare that Commonwealth and Ticor have no duty under the  
4 Closing Protection Letters because Rivera/Escrow Services was never the "Settlement  
5 Agent of Approved Attorney" under the plain language of the Letters;

6 (d) Declare that Commonwealth and Ticor have no duty to defend  
7 Plaintiff in the *Tang* Lawsuit;

8 (e) Declare that Kiavi suffered no injury that is compensable under the  
9 Title Policies or Closing Protection Letters;

10 (f) Declare that Commonwealth/Ticor's denial of coverage and denial  
11 of tender for Kiavi's tender was proper; and

12 (g) Enter such other relief as is just and equitable.

13 DATED: June 14, 2022.

14 SIRIANNI YOUTZ  
15 SPOONEMORE HAMBURGER PLLC

16 /s/ Richard E. Spoonemore  
17 Richard E. Spoonemore, WSBA #21833  
18 *rspoonemore@sylaw.com*

19 /s/ Ann E. Merryfield  
20 Ann E. Merryfield, WSBA #14456  
21 *amerryfield@sylaw.com*  
22 3101 Western Avenue, Suite 350  
23 Seattle, WA 98121  
24 Telephone: (206) 223-0303  
25 Facsimile: (206) 223-0246

26 *Attorneys for Plaintiffs*